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PTO/SB/21 (08-03)

Approved for use through 04/30/2003. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number

08/479,920

Filing Date

June 7, 1995

First Named Inventor

Marcus F. Boehm

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JAN 14 2004

Group Art Unit

1621

OFFICE OF PETITIONS

Examiner Name

Paul J. Killos

Total Number of Pages in This Submission

14

Attorney Docket Number

45026.00065.CON1

### ENCLOSURES (check all that apply)

Fee Transmittal Form  
 Fee Attached  
 Amendment/Reply  
 After Final  
 Affidavits/declaration(s)  
 Extension of Time Request  
 Express Abandonment Request  
 Information Disclosure Statement  
  
 Certified Copy of Priority Document(s)  
 Response to Missing Parts/ Incomplete Application  
 Response to Missing Parts under 37 CFR 1.52 or 1.53

Drawing(s)  
 Licensing-related Papers  
 Petition  
 Petition to Convert to a Provisional Application  
 Power of Attorney, Revocation Change of Correspondence Address  
 Terminal Disclaimer  
 Request for Refund  
  
 CD, Number of CD(s) \_\_\_\_\_

After Allowance Communication to Group  
 Appeal Communication to Board of Appeals and Interferences  
 Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)  
 Proprietary Information  
 Status Letter  
 Other Enclosure(s) (please identify below):

Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181 dated 1/6/04; copy of Petition Pursuant to 37 CFR § 1.313(a) to Withdraw Application from Issuance dated 10/14/98; copy of Examiner Interview Summary Record; and copy of Amendment and Remarks dated 8/10/99.

Remarks



### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

36183

PATENT TRADEMARK OFFICE

Firm or Individual name	Paul, Hastings, Janofsky & Walker LLP	
Signature		
Date	January 6, 2004	

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Janice Crisp		
Signature		Date	January 6, 2004

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O P E  
JAN 12 2004

PTO/SB/17 (10-03)

Approved for use through 07/31/2006. OMB 0651-0032  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRADE FEE TRANSMITTAL  
for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 130.00)

Complete if Known

Application Number	08/479,920	RECEIVED
Filing Date	June 7, 1995	JAN 14 2004
First Named Inventor	Marcus F. Boehm	
Examiner Name	Paul J. Killos	
Art Unit	1621	OFFICE OF PETITIONS
Attorney Docket No.	45026.00065.CON1	

## METHOD OF PAYMENT (check all that apply)

 Check  Credit card  Money Order  Other  None
 Deposit Account:

Deposit Account Number 50-2613  
Deposit Account Name

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below  Credit any overpayments  
 Charge any additional fee(s) or any underpayment of fee(s)  
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$ 0)			

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20**	=	
Multiple Dependent	- 3**	=	

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	
1202 18	2202 9	Claims in excess of 20
1201 86	2201 43	Independent claims in excess of 3
1203 290	2203 145	Multiple dependent claim, if not paid
1204 86	2204 43	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$ 0)		

\*\*or number previously paid, if greater; For Reissues, see above

## 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify) _____			
*Reduced by Basic Filing Fee Paid			
SUBTOTAL (3) (\$ 130.00)			

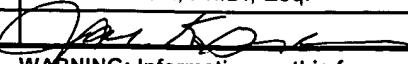
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JUN 30 2004

OFFICE OF PETITIONS

## SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Jane K. Babin, Ph.D., Esq.	Registration No. (Attorney/Agent)	47,224	Telephone	858-720-2677
Signature				Date	1-6-04

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JAN 21 2004

TECH CENTER 1600/2900

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent

45026.00065.CON1

(formerly 015110.0065.CON1)

In re the Application of:

) Group Art Unit: 1621

JAN 14 2004

Applicant: Boehm, et al.

) Examiner: Killos, Paul J. OFFICE OF PETITIONS

Serial No.: 08/479,920

)

Filed: June 7, 1995

)

For: COMPOUNDS HAVING  
SELECTIVE ACTIVITY FOR  
RETINOID X RECEPTORS, AND  
MEANS FOR MODULATION OF  
PROCESSES MEDIATED BY  
RETINOID X RECEPTORS

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**PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby petition under 37 C.F.R. § 181 to withdraw the holding of abandonment.

Applicants respectfully submit that the holding of abandonment is in error.

01/13/2004 EFLORES 00000156 502613 08479920

01 FC:1460 130.00 DA

**CERTIFICATE OF MAILING**  
(37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

1-6-04

Date of Deposit

SAN/72082.3

Janice Crisp

Name of Person Mailing Paper

Signature of Person Mailing Paper

A Notice of Abandonment for this case was mailed on May 6, 1999. In an interview on August 10, 1999, the Examiner recognized that the Notice of Abandonment had been issued in error and agreed to revive the case. That agreement is evidenced in the Interview Summary Record. As is discussed below, it appears that that Interview Summary Record was misplaced within the Patent Office file. Whatever the reason, the Patent Office failed to revive the application, as it had agreed to do in the interview. Since the time of the interview, no event has occurred to provide a basis for holding the application abandoned and no additional Notice of Abandonment has been received by the Applicants. Thus, the holding of abandonment should be withdrawn and the application should be held as pending. Moreover, an Amendment filed August 10, 1999, the same day as the interview, placed the Application in condition for allowance. Thus, Applicants respectfully request that the Application be allowed.

#### Background

On July 28, 1998, Applicants received a Notice of Allowability allowing claims 33-37 and 39-48. Payment of a \$1320.00 issue fee was due on October 28, 1998. On October 14, 1998, Applicants filed a Petition Pursuant to 37 C.F.R. § 1.313(a) to Withdraw Application From Issuance, along with the appropriate petition fee of \$130.00 (copy enclosed). Applicants noted in that Petition that the "claims of the application contain interfering subject matter with the claims of issued U.S. Patent No. 5,466,861 . . ." and further noted that a request for interference would be filed separately. That October 14, 1998 filing was adequate to withdraw the case from issuance as potential

interference provides “good and sufficient reasons why withdrawal of the application from issue is necessary.” See 37 C.F.R. § 1.313(a).

Inspection of the Patent Office file history of the Application (obtained through a third-party service, DigiPat, Arlington VA) showed that Applicants’ Rule 313(a) Petition was not in the file and was not recorded in the application “Contents.” Notwithstanding Applicants’ request for withdrawal from issuance, the application was mistakenly abandoned by the U.S. Patent Office, as evidenced by the “Notice of Abandonment” mailed on May 6, 1999. According to the notice, the application was considered abandoned for failure to pay the issue fee.

Upon receipt of the Notice of Abandonment, Applicants promptly contacted Examiner Killos and confirmed that the abandonment was issued in error. Examiner Killos agreed to correct the mistake and act on the application. On August 10, 1999, Applicants conducted an in-person interview with Examiner Killos, which is memorialized in the Examiner Interview Summary Record (copy enclosed). That Interview Summary Record confirms that the application should not have been abandoned. *See id.* (providing Examiner’s comments: “Case to be revived.”).

Applicants note that this Interview Summary Record appears to have been misfiled by the Patent Office, which may account for the lack of follow-up. When Applicants obtained a copy of the file history, the Interview Summary Record was notably absent from the Contents listing. Upon careful examination of the file, however, the August 10, 1999 Interview Summary Record was found between an Interview Summary Record dated January 8, 1997 (paper No. 10) and an Office Action dated February 24, 1997 (paper No. 11). Perhaps that misfiling of the August 10, 1999 Interview

Summary Record, along with the failure to assign a Paper Number or to catalog the document in the Application Contents, contributed to the inadvertent failure of the Patent Office to recognize that abandonment had been withdrawn.

Also on August 10, 1999, the same day as the interview, Applicants filed an Amendment (copy enclosed). In that Amendment, Applicants cancelled claims containing subject matter that potentially interfered with U.S. Patent Nos. 5,466,861 and 5,837,725 to Dawson, *et al.* The remaining claims, having received a thorough examination on the merits, were thus placed in condition for allowance and a notice to that effect was anticipated by the Applicants.

Applicants thereafter filed a Revocation and Grant of Power of Attorney on July 9, 2001. Then, having not received any correspondence from the Patent Office following the August 10, 1999 Interview and Amendment, Applicants filed a Status Inquiry on November 26, 2001. The Patent Office did not respond to that Status Inquiry. Applicants filed another Revocation and Grant of Power of Attorney on November 1, 2002 and, having not received a response to the Status Inquiry filed November 26, 2001, Applicants inquired as to the status of the application using the Patent Application Information Retrieval (PAIR) system.

Applicants were surprised to learn that as of July 24, 2003, according to the PAIR system, the last four entries in the file history, were:

- (1) Item Number 27 - Mail Notice of Allowance, July 28, 1998;
- (2) Item Number 28 – Abandonment for Failure to Pay Issue Fee, May 6, 1999;

(3) Item Number 29 - Mail Notice of Abandonment from Publications, May 6, 1999; and

(4) Item Number 30 - Correspondence Address Change, November 25, 2000.

Thus, the PAIR system and File History for the application do not reflect a number of documents filed by Applicants and/or recorded by the Examiner in this case. Specifically:

(1) the Examiner Interview Summary Record dated August 10, 1999, was found in the Patent Office file, but not in the expected location and not indexed in either the file history contents or the PAIR system;

(2) the Amendment filed by the Applicants on August 10, 1999, is absent from Patent Office records; and

(3) the Petition Pursuant to 37 C.F.R. § 1.313(a) to Withdraw Application From Issuance, filed on October 14, 1998, is neither present in the file history nor indexed in either the file history contents or PAIR system records.

### Conclusion

Applicants respectfully submit that Patent Office error in misplacing or misfiling the documents listed above mistakenly resulted in failure to withdraw the holding of abandonment.

Further, Applicants respectfully submit that the two documents dated August 10, 1999 (*i.e.*, item (1) the Examiner Interview Summary Record, and (2) the Amendment) demonstrate that the Patent Office acknowledged that the application was mistakenly deemed abandoned and agreed to withdraw the holding of abandonment. Since August 10, 1999, no event has occurred that provides a statutory basis for abandonment. Moreover, Applicants have not received a Notice of

Patent  
45026.00065.CON1  
(formerly 015110.0065.CON1)

Abandonment other than the original Notice mailed May 6, 1999, which the Examiner agreed to withdraw.

Accordingly, Applicants hereby petition under 37 C.F.R. § 1.181 to withdraw the holding of abandonment. Applicant provides the required petition fee of \$130.00 under 37 C.F.R. § 1.17(h). If any additional fee is due, the Commissioner is hereby authorized to charge any fee required by this submission to our Deposit Account No. 50-2613.

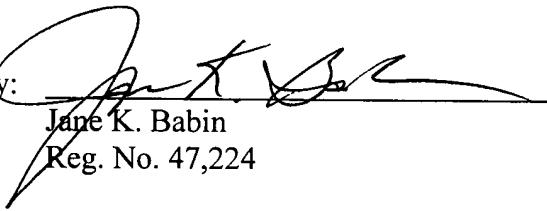
Respectfully submitted,

PAUL HASTINGS JANOFSKY & WALKER LLP

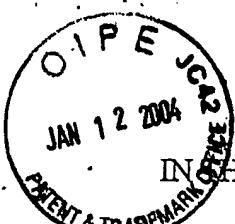
Dated:

January 6, 2007

By:

  
Jane K. Babin  
Reg. No. 47,224

**PAUL HASTINGS JANOFSKY & WALKER LLP**  
12390 El Camino Real  
San Diego, CA 92130  
Phone: (858) 720-2500  
Fax: (858) 720-2555



PATENT  
214/226

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

BOEHM et al.

Serial No.: 08/479,920

Filed: June 7, 1995

For: COMPOUNDS HAVING SELECTIVE  
ACTIVITY FOR RETINOID X  
RECEPTORS, AND MEANS FOR  
MODULATION OF PROCESSES  
MEDIATED BY RETINOID X  
RECEPTORS

) Art Unit: 1621

) Examiner: Killos, P.

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PETITION PURSUANT TO 37 CFR § 1.313(a)  
TO WITHDRAW APPLICATION FROM ISSUANCE

Box Issue Fee  
c/o Technology Center 3700  
U.S. Patent and Trademark Office  
Washington, D.C. 20231

Sir:

Pursuant to 37 CFR § 1.313(a), applicants of the above-identified patent application hereby petition and request withdrawal from issuance of the application, for which applicants have received a Notice of Allowance and Issue Fee Due dated July 28, 1998.

LA-54680.1

CERTIFICATE OF MAILING  
(37 C.F.R. §1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to the Box Issue Fee, c/o Technology Center 3700, U.S. Patent and Trademark Office, Washington, D.C. 20231.

EM351173167US  
Express Mail Label No.

October 14, 1998  
Date of Deposit

Rick Moreno  
Name of Person Mailing Paper

Rick Moreno  
Signature of Person Mailing Paper

The reason why withdrawal of the application is necessary is so that an interference can be declared, since the claims of this application contain interfering subject matter with the claims of issued U.S. Patent No. 5,466,861 (Dawson et al.). Specifically, e.g., claim 48 of this application corresponds nearly identically to claim 13 of Dawson et al., U.S. Patent No. 5,466,861.

A Request For Interference will be filed separately by applicants.

Accompanying this petition is our check for \$130.00 for the fee set forth in 37 CFR § 1.17(i). The Assistant Commissioner is hereby authorized to charge any additional fees which may be required by this petition, or credit any overpayment, to Deposit Account No. 12-2475.

Respectfully submitted,

By:   
Hope E. McVille  
Reg. No. 34,874

Dated: October 14, 1998

LYON & LYON LLP  
633 West Fifth Street  
Suite 4700  
Los Angeles, California 90071-2066  
(213) 489-1600

LA-54680.1

Please acknowledge receipt of the following by affixing hereon the Patent and Trademark Office date stamp and returning this card to our office.

Applicant: BOEHM et al.  
Serial No.: 08/479,920  
For: COMPOUNDS HAVING SELECTIVE ACTIVITY FOR RETINOID X RECEPTORS, AND MEANS FOR MODULATION OF PROCESSES MEDIATED BY RETINOID X RECEPTORS  
Filed: June 7, 1995

Title of Document: PETITION PURSUANT TO 37 CFR § 1.313(a) TO WITHDRAW APPLICATION FROM ISSUANCE

Attorney(s): Hope E. Melville  
Docket No.: 214/226

Enclosure: Check No. 45089 - \$130.00 (petition filing fee)  
Express Mail Label No. EM351173167US Date of Deposit: Oct. 14, 1998

UNION BANK OF CALIFORNIA  
LOS ANGELES, CA 90071

16-49  
1220

**LYON & LYON LLP**

ATTORNEYS - AT - LAW

633 WEST FIFTH STREET, SUITE 4700

LOS ANGELES CALIFORNIA 90071-2066

No. 45089

DOCKET NO. 214/226  
SERIAL NO. 08/479,920  
APPLICANT BOEHM ET AL.

EXPLANATION	AMOUNT
PETITION FEE	130.

DATE OCTOBER 13, 1998 \$ 130.00  
LYON & LYON LLP

TO THE ORDER OF: COMMISSIONER OF PATENTS AND TRADEMARKS

*Rosa Polk*

LYON & LYON LLP  
LOS ANGELES, CALIFORNIA

REMITTANCE ADVICE  
PLEASE DETACH BEFORE  
DEPOSITING CHECK

TO COST OF PETITION FEE 130.00 (12000)

HEM RE: BOEHM ET AL  
DOCKET NO. 214/226  
NO. 08/479,920

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TECH CENTER 1600/2900

Patent No.  
214/226



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

BOEHM, et al.

Serial No.: 08/479,920

Filed: June 7, 1995

For: COMPOUNDS HAVING SELECTIVE  
ACTIVITY FOR RETINOID X RECEPTORS,  
AND MEANS FOR MODULATION OF  
PROCESSES MEDIATED BY RETINOID X  
RECEPTORS

) Group Art Unit: 1621

) Examiner: Killos, P.

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JAN 14 2004

OFFICE OF PETITIONS

AMENDMENT AND REMARKS

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Please amend the above-identified application as follows:

IN THE CLAIMS:

Please cancel claims 45, 46 and 48 without prejudice. Pursuant to the discussion  
with Examiner Killos at the Examiner's Interview of even date, Applicant will provide a

CERTIFICATE OF FILING  
(37 C.F.R. §1.6(c))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being hand delivered to  
United States Patent and Trademark Office, Group 1621 at Crystal Mall 1, Arlington, Virginia.

Michael Wise

Name of Person Filing Paper

Michael Wise  
Signature of Person Filing Paper

August 10, 1999  
Date of Deposit

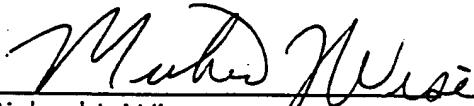
Patent No.  
214/226

further response and/or amendment that addresses the Examiner's comments regarding  
Davies' U.S Patent No. 5,399,586.

Respectfully submitted,

LYON & LYON LLP

By

  
Michael J. Wise  
Registration No. 34,047

Dated: August 10, 1999

633 West Fifth Street, Suite 4700  
Los Angeles, California 90071-2066  
(213) 489-1600



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UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKETT NO.
08/479920	06/07/95	BOEHM, et al	214/226
		EXAMINER	
		Killor, Paul, J	
		ART UNIT	PAPER NUMBER
		1621	

DATE MAILED:

EXAMINER INTERVIEW SUMMARY RECORD

All participants (applicant, applicant's representative, PTO personnel):

(1) Michael Wise (3) S. Elmer  
(2) C. Condilou (4) \_\_\_\_\_

Date of Interview 10 Aug. 1999

Type:  Telephonic  Personal (copy is given to  applicant  applicant's representative).

Exhibit shown or demonstration conducted:  Yes  No. If yes, brief description: \_\_\_\_\_

Agreement  was reached with respect to some or all of the claims in question.  was not reached.

Claims discussed: \_\_\_\_\_

Identification of prior art discussed: \_\_\_\_\_

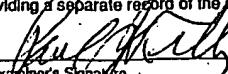
Description of the general nature of what was agreed to if an agreement was reached, or any other comments: Case to be resolved. Will come in with claims to resolve any interference with Dallee's or sound claim & be allowable.

(A fuller description, if necessary, and a copy of the amendments, if available, which the examiner agreed would render the claims allowable must be attached. Also, where no copy of the amendments which would render the claims allowable is available, a summary thereof must be attached.)

1. It is not necessary for applicant to provide a separate record of the substance of the interview.

Unless the paragraph below has been checked to indicate to the contrary, A FORMAL WRITTEN RESPONSE TO THE LAST OFFICE ACTION IS NOT WAIVED AND MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW (e.g., items 1-7 on the reverse side of this form). If a response to the last Office action has already been filed, then applicant is given one month from this interview date to provide a statement of the substance of the interview.

2. Since the examiner's interview summary above (including any attachments) reflects a complete response to each of the objections, rejections and requirements that may be present in the last Office action, and since the claims are now allowable, this completed form is considered to fulfill the response requirements of the last Office action. Applicant is not relieved from providing a separate record of the substance of the interview unless box 1 above is also checked.

  
Examiner's Signature